

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

BOBBY DAVIS,)
vs.)
Plaintiff,) Cause No.: 19-cv-180
vs.) Missouri Circuit Court for Pemiscot County
vs.) Cause No.: 19PE-CC00278
JOHN ROBERT SMITH and)
USA TRUCK, INC.) **JURY TRIAL DEMANDED**
Defendants.)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, *et seq.*, Defendant USA Truck, Inc., files its Notice of Removal of this lawsuit originally filed in the Missouri Circuit Court for Pemiscot County, and in support of this Notice states:

1. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and is one which may be removed to this Court pursuant to 28 U.S.C § 1441 *et seq.*
2. Plaintiff's Petition asserts allegations of negligence against Defendant. (Ex. A, Pl.'s Pet.).
3. Plaintiff does not assert his citizenship in his Petition, but asserts that he resides in New Madrid County, Missouri. *Id.* at ¶ 1.
4. Citizenship of individuals for the purposes of diversity jurisdiction is determined by domicile. *Cooney v. Usher*, 2012 WL 484697 *1 (E.D. Mo. February 14, 2012). One's physical presence in a state and the intent to remain in the state establishes domicile and thus citizenship. *Id.*; *Altimore v. Mount Mercy Coll.*, 420 F.3d 763, 768-69 (8th Cir. 2005).
5. The "intent to remain" element of determining an individual's state of citizenship is a legal conclusion drawn from the totality of the circumstances. *Cooney* at *1. Courts consider,

for example, such factors as current residence, place of employment, location of property, voter registration, driver's license registration, and payment of taxes. *Id.* at * 2; *Altimore*, 420 F.3d at 769.

6. Plaintiff asserts that he resides in New Madrid County, Missouri. (Ex. A, Pl.'s Pet.) Plaintiff has paid taxes to Missouri on his personal properties since 2012. (Ex. B, Pl.'s Property Tax Payment Receipts.) Plaintiff has registered to vote in the State of Missouri. (Ex. C, Pl.'s Voter Registration Record.)

7. The totality of the circumstances shown in the attached exhibits demonstrate that Plaintiff resides in the State of Missouri; has property located in the State of Missouri; pays taxes in the State of Missouri; is registered to vote in the State of Missouri, and has family located in the State of Missouri. These facts show that Plaintiff has the intent to remain in the State of Missouri indefinitely. Thus, Plaintiff is domiciled in the State of Missouri and is therefore a citizen of the State of Missouri.

8. Although this removal does not need Co-Defendant John Robert Smith's consent per 28 U.S.C. § 1446(b)(2)(A) because he has not been served in this lawsuit, Co-Defendant is a citizen of the State of Mississippi. (Ex. D, Smith's Citizenship Decl. Aff.)

9. For the purposes of diversity jurisdiction under 28 U.S.C. § 1332, a corporation "shall be deemed a citizen of every State...by which it has been incorporated and of the State...where it has its principal place of business." 28 U.S.C. § 1332(c)(1). The phrase principal place of business refers to the place where a corporation's high level officers direct, control, and coordinate the corporation's activities. *Hertz Corp. v. Friend*, 559 U.S. 77, 78, 95-96 (2010).

10. Defendant USA Truck, Inc. is a profit corporation incorporated in the State of Delaware with its principal place of business in Van Buren, Arkansas. (Ex. E, USA Truck, Inc.'s Decl. Aff.)

11. Defendant is, therefore, a citizen of the State of Delaware and of the State of Arkansas.

12. Plaintiff thus is a citizen of a state different than that of Defendant and that of Co-Defendant.

13. Federal district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States. 28 U.S.C. § 1332(a)(1).

14. The amount in controversy exceeds \$75,000.00 because Plaintiff has made a demand for the sum of \$250,000.00. (Ex. F, Plaintiff Counsel's Demand Letter).

15. The subject matter jurisdiction is, therefore, proper in this Court pursuant to 28 U.S.C. § 1332.

16. Filed with this Notice of Removal, and attached as Ex. G, is a true and correct copy of all process, papers, pleadings, exhibits, and orders contained within the Pemiscot County, Missouri Circuit Court file.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1446 because this action was originally filed in the Circuit Court of Pemiscot County, Missouri, which is included in this Court's judicial area.

18. A copy of Civil Cover Sheet, Original Filing Form, and a Disclosure of Organizational Interests Certificate have been filed with and attached to this Notice of Removal.

WHEREFORE, Defendant USA Truck, Inc. respectfully notifies this Court that the above captioned action has been removed from the Circuit Court of Pemiscot County, Missouri.

/s/ Joseph R. Swift
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was forwarded via ECF to counsel of record, as prescribed by law, on this 10th day of October, 2019.

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